(ii) Imposing enhanced margin requirements;

(iii) Imposing position limits;

(iv) Prohibiting an increase in positions;

(v) Requiring a reduction of positions;

(vi) Liquidating or transferring positions; and

(vii) Suspending or revoking clearing membership.

§ 39.14 Settlement procedures.

(a) *Definitions*—(1) *Settlement*. For purposes of this section, ''settlement'' means:

(i) Payment and receipt of variation margin for futures, options, and swaps;

(ii) Payment and receipt of option premiums;

(iii) Deposit and withdrawal of initial margin for futures, options, and swaps;

(iv) All payments due in final settlement of futures, options, and swaps on the final settlement date with respect to such positions; and

(v) All other cash flows collected from or paid to each clearing member, including but not limited to, payments related to swaps such as coupon amounts.

(2) *Settlement bank*. For purposes of this section, ''settlement bank'' means a bank that maintains an account either for the derivatives clearing organization or for any of its clearing members, which is used for the purpose of any settlement described in paragraph (a)(1) above.

(b) *Daily settlements*. Except as otherwise provided by Commission order, a derivatives clearing organization shall effect a settlement with each clearing member at least once each business day, and shall have the authority and operational capacity to effect a settlement with each clearing member, on an intraday basis, either routinely, when thresholds specified by the derivatives clearing organization are breached, or in times of extreme market volatility.

(c) *Settlement banks*. A derivatives clearing organization shall employ settlement arrangements that eliminate or strictly limit its exposure to settlement bank risks, including the credit and liquidity risks arising from the use of such bank(s) to effect settlements with its clearing members, as follows:

(1) A derivatives clearing organization shall have documented criteria that must be met by any settlement bank used by the derivatives clearing organization or its clearing members, including criteria addressing the capitalization, creditworthiness, access to liquidity, operational reliability, and regulation or supervision of such bank(s).

(2) A derivatives clearing organization shall monitor each approved settlement bank on an ongoing basis to ensure that such bank continues to meet the criteria established pursuant to paragraph (c)(1) of this section.

(3) A derivatives clearing organization shall monitor the full range and concentration of its exposures to its own and its clearing members' settlement bank(s) and assess its own and its clearing members' potential losses and liquidity pressures in the event that the settlement bank with the largest share of settlement activity were to fail. A derivatives clearing organization shall take any one or more of the following actions, to the extent that any such action or actions are reasonably necessary in order to eliminate or strictly limit such exposures:

(i) Maintain settlement accounts at one or more additional settlement banks; and/or

(ii) Approve one or more additional settlement banks that its clearing members could choose to use; and/or

(iii) Impose concentration limits with respect to one or more of its own or its clearing members' settlement banks; and/or

(iv) Take any other appropriate actions.

(d) *Settlement finality*. A derivatives clearing organization shall ensure that settlements are final when effected by ensuring that it has entered into legal agreements that state that settlement fund transfers are irrevocable and unconditional no later than when the derivatives clearing organization's accounts are debited or credited; provided, however, a derivatives clearing organization's legal agreements with its settlement banks may provide for the correction of errors. A derivatives clearing organization's legal agreements with its settlement banks shall state clearly when settlement fund

transfers will occur and a derivatives clearing organization shall routinely confirm that its settlement banks are effecting fund transfers as and when required by such legal agreements.

(e) *Recordkeeping.* A derivatives clearing organization shall maintain an accurate record of the flow of funds associated with each settlement.

(f) *Netting arrangements.* A derivatives clearing organization shall possess the ability to comply with each term and condition of any permitted netting or offset arrangement with any other clearing organization.

(g) *Physical delivery.* With respect to products that are settled by physical transfers of the underlying instruments or commodities, a derivatives clearing organization shall:

(1) Establish rules that clearly state each obligation that the derivatives clearing organization has assumed with respect to physical deliveries, including whether it has an obligation to make or receive delivery of a physical instrument or commodity, or whether it indemnifies clearing members for losses incurred in the delivery process; and

(2) Ensure that the risks of each such obligation are identified and managed.

§ 39.15   Treatment of funds.

(a) *Required standards and procedures.* A derivatives clearing organization shall establish standards and procedures that are designed to protect and ensure the safety of funds and assets belonging to clearing members and their customers.

(b) *Segregation of funds and assets*—(1) *Segregation.* A derivatives clearing organization shall comply with the applicable segregation requirements of section 4d of the Act and Commission regulations thereunder, or any other applicable Commission regulation or order requiring that customer funds and assets be segregated, set aside, or held in a separate account.

(2) *Commingling of futures, options, and swaps*—(i) *Cleared swaps account.* In order for a derivatives clearing organization and its clearing members to commingle customer positions in futures, options, and swaps, and any money, securities, or property received to margin, guarantee or secure such

positions, in an account subject to the requirements of section 4d(f) of the Act, the derivatives clearing organization shall file rules for Commission approval pursuant to § 40.5 of this chapter. Such rule submission shall include, at a minimum, the following:

(A) Identification of the futures, options, and swaps that would be commingled, including product specifications or the criteria that would be used to define eligible futures, options, and swaps;

(B) Analysis of the risk characteristics of the eligible products;

(C) Identification of whether the swaps would be executed bilaterally and/or executed on a designated contract market and/or a swap execution facility;

(D) Analysis of the liquidity of the respective markets for the futures, options, and swaps that would be commingled, the ability of clearing members and the derivatives clearing organization to offset or mitigate the risk of such futures, options, and swaps in a timely manner, without compromising the financial integrity of the account, and, as appropriate, proposed means for addressing insufficient liquidity;

(E) Analysis of the availability of reliable prices for each of the eligible products;

(F) A description of the financial, operational, and managerial standards or requirements for clearing members that would be permitted to commingle such futures, options, and swaps;

(G) A description of the systems and procedures that would be used by the derivatives clearing organization to oversee such clearing members' risk management of any such commingled positions;

(H) A description of the financial resources of the derivatives clearing organization, including the composition and availability of a guaranty fund with respect to the futures, options, and swaps that would be commingled;

(I) A description and analysis of the margin methodology that would be applied to the commingled futures, options, and swaps, including any margin reduction applied to correlated positions, and any applicable margin rules with respect to both clearing members and customers;